

REQUEST FOR PROPOSALS TO PERFORM EXAMINATION RATING SERVICES

REQUISITION #212-6-0006 / CLASS & ITEM 924-20

Table of Contents

SECTION I. GENERAL	
1.1 Scope	
1.2 Services Period	
1.3 Compensation	
1.4 Overview of JBCC and OCA.....	
SECTION II. STATEMENT OF WORK	
2.1 Service Requirements.....	
2.2 Service Deliverables	
2.3 On-line Resources	
2.4 Requirements and Standards	
2.5 Subcontractors	
2.6 Performance Tracking.....	
SECTION III. PROPOSAL INFORMATION	
3.1 Schedule of Events	
3.2 Revisions to Schedule.....	
3.3 Pre-proposal Conference	
3.4 Proposal Requirements.....	
3.5 Inquiries.....	
3.6 Proposal Submission	
3.7 Delivery of Proposals	
3.8 Proposal Opening	
3.9 Proposal Evaluation and Award	
3.10 Reservation of Rights.....	
SECTION IV. GENERAL TERMS AND CONDITIONS	
4.1 Offer and Acceptance	
4.2 Contract Documents	
4.3 Standards of Services	
4.4 Program Manager	
4.5 Personnel	
4.6 Invoices	
4.7 Payments	
4.8 Term and Termination.....	

4.9	Public Access to Records
4.10	Confidentiality.....
4.11	Insurance and Other Security
4.12	Indemnification
4.13	Dispute Resolution
4.14	Amendments
4.15	Applicable Law; Venue.....
4.16	Strict Compliance
4.17	Assignments.....
4.18	Partially-Completed Work
4.19	Federal, State and Local Requirements
4.20	Severability Clause
4.21	Applicable Law and Conforming Amendments
4.22	No Waiver
4.23	No Liability Upon Termination
4.24	Independent Contractor
4.25	Limitation on Authority.....
4.26	Intellectual Property Claims
4.27	Supporting Documents.....
4.28	Access to Records
4.29	Felony Criminal Convictions
4.30	Notices
4.31	Debts or Delinquencies to State
4.32	Contracts for Services.....
4.33	Work Made for Hire
4.34	Technology Access Clause.....
4.35	Policy Compliance.....
4.36	Force Majeure
4.37	Default.....
4.38	No Conflicts
4.39	False Statements / Breach of Representations

ATTACHMENTS

EXHIBIT A, RESPONDENT QUESTIONNAIRE

HUB SUBCONTRACTING PLAN (HSP)

EXHIBIT B, EXECUTION OF PROPOSAL

ANTITRUST CERTIFICATION STATEMENT

PRICING SUBMISSION FORM

REQUEST FOR PROPOSALS TO PERFORM EXAMINATION RATING SERVICES

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SECTION I GENERAL

1.1 **SCOPE.**

The Judicial Branch Certification Commission (JBCC) seeks proposals for examination rating services for the oral examination for licensing language interpreters for court proceedings in accordance with the specifications contained in this Request for Proposal (RFP). The examination is developed by the National Center for State Courts (NCSC), and the rating services may be rendered only by a rater approved by NCSC.

Respondents may submit proposals to render rating services for oral examinations in one or more languages available through the NCSC. However, the JBCC has a specific need for approved raters to rate oral examinations in Spanish, Korean, Mandarin, and Vietnamese. The JBCC may select more than one NCSC-approved rater to fulfill its need for rating services for more than one language.

1.2 **SERVICES PERIOD.**

The services requested shall begin on the last signature date on the purchase order and shall end no later than August 31, 2017. By written agreement of the parties, the contract may be extended for up to two (2) one-year terms at the same price, terms, and conditions.

1.3 **COMPENSATION.**

The selected approved raters will receive compensation for each examination rated in accordance with the contract and the *NCSC State Court Interpreter Testing Desk Reference Manual*. Over the past 7 years, an average of 115 people took a licensed court interpreter examination. It is anticipated, but not guaranteed that approximately 115 examinees will take the examination each year.

1.4 **OVERVIEW OF JBCC and OCA.**

The JBCC was created within the judicial branch of Texas state government to oversee the regulation of court-related functions assigned to it by law and the Supreme Court of Texas. Pursuant to Chapter 152 of the Texas Government Code, the JBCC is appointed by the Supreme Court and is administratively attached to the Office of Court Administration (OCA). Section 152.103, Texas Government Code. The OCA Director and staff administers and enforces JBCC programs. Among the functions of the JBCC is the oversight and administration of a program to license court interpreters for individuals who do not comprehend or communicate in English. The licensing program includes the administration, grading and rating of examinations to test the knowledge, skill and efficiency of applicants to interpret a language into the English.

Further information regarding the Judicial Branch Certification Commission and its operations, including the Licensed Court Interpreter program and Guardian Certification program can be found at OCA's Web site: <http://www.txcourts.gov/jbcc.aspx>.

SECTION II STATEMENT OF WORK

2.1 SERVICE REQUIREMENTS.

Services shall include, without limitation, those specified in this RFP. Services set forth that include the words "must" or "shall" are mandatory and must be provided as specified with no alteration, modification, or exception. Services set forth that include the words "may" or "can" allow Respondents to offer alternatives to the manner in which the services are provided.

The licensed court interpreter examination has two components: written and oral. Passing the written examination is a condition precedent to taking the oral examination. The licensed court interpreter examination given in Texas is managed and maintained by the National Center for State Courts (NCSC). The JBCC, or a vendor through a separate contract, will administer and grade the written examination. The JBCC seeks NCSC-approved raters to rate the oral examination in accordance with the *NCSC State Court Interpreter Testing Desk Reference Manual*.

Pursuant to agreement with NCSC, Texas must adhere to certain policies, standards, and protocols for test security and administration. Under the agreement JBCC is also required to include certain confidentiality and security requirements in any contract for assistance with administration of the examination. Accordingly, the selected raters shall abide by rating and exam security protocols and standards set forth in the Rating Manual maintained by the National Center for State Courts' Language Access Division, found at <http://www.ncsc.org/Services-and-Experts/Areas-of-expertise/Language-access/Written-and-Oral-Exam-Resources.aspx>

Raters must not discuss with, or allow access to, the contents of any exam materials to anyone other than authorized Raters, Program Managers, or NCSC staff. Upon completion of exam rating, a rater shall return all exam related materials to the JBCC. Raters may not retain any copies, paper or electronic, of any exam-related content.

The selected raters are responsible for ensuring the security of test materials and complying will all requirements for the transportation and communication of test materials. Selected raters may not reveal the contents of the oral examination to any unauthorized person through any means whatsoever, including, without limitation:

- Discussing or disclosing contents of the examination with any unauthorized person;
- Retaining any documentation or records relating to the examination after completion of rating;
- Sending or discussing examination materials electronically; and
- Recording of any portion of the examination.

If test materials are exposed or compromised, the rater will be liable for all or part of the cost of developing replacement materials. Raters must maintain strict compliance with security requirements specified in the *NCSC State Court Interpreter Testing Desk Reference Manual* and strictly adhere to the direction of the JBCC. Raters must sign an oath promising to comply with security standards prior to receiving examination materials.

The process for administering the oral examination and rating examination results is as follows:

- Once the candidate passes the written examination, JBCC notifies the candidate he or she is eligible for the oral exam.
- JBCC schedules all available candidates for the oral examination.
- JBCC notifies selected rater regarding scheduled examination.
- JBCC sends a spreadsheet with a list of candidates scheduled to take the oral examination to NCSC.

- NCSC fills in the examination type column in the spreadsheet to indicate which examination should be delivered to JBCC for each candidate.
- NCSC sends oral examination materials via secure platform.
- JBCC administers the oral examination pursuant to NCSC policies, standards, and protocols.
- JBCC plays examinee performance recording for examinee and obtains written confirmation from examinee that it is the examinee who is recorded.
- JBCC sends audio recordings of candidate performances and corresponding documentation to selected NCSC-approved raters to be rated via secured means, including the SharePoint site.
- Two raters - one NCSC-approved lead rater and one approved rater or two approved raters and one rating supervisor - rate examination, depending upon availability and NCSC procedures when lead raters are not available.
- Rater sends results of oral examination rating, recordings, materials, and copies of the grade report to JBCC in two shipments – the first for examination materials and related documents and the second for examinee performance audio recording.
- Rater provides all examination materials to JBCC for audit, examinee notification and return to NCSC. Rater ensures all security protocols are followed in receiving and sending examination materials.
- If an audit reveals multiple errors, JBCC will return test materials to the lead rater for review at no cost to JBCC.
- Under certain circumstances, it may be appropriate to re-rate examination materials. JBCC will send materials to a separate rater for re-rating following the same security and delivery procedures for the initial rater.

Upon a candidate's request to re-take the oral exam to upgrade to a Master license after a Basic license has been issued, JBCC and raters would follow the above process for administering oral examinations.

2.2 SERVICE DELIVERABLES.

Respondents may submit a proposal for the rating of the oral examination portion of the Licensed Court Interpreter Examination for any languages for which Respondent has been approved by the NCSC. **Respondents must be NCSC-approved raters to be eligible for consideration.** The policies, standards and protocols for the Licensed Court Interpreter Examination are found in the *NCSC State Court Interpreter Testing Desk Reference Manual* that is available at: www.ncsc.org.

2.3 ON-LINE RESOURCES.

The following documents will be posted on OCA's Contracting & Procurements Web page (<http://www.txcourts.gov/oca/contracting-procurements.aspx>) and Electronic State Business Daily (ESBD) <http://esbd.cpa.state.tx.us/> to assist in evaluating the service requirements for this proposal:

- *NCSC State Court Interpreter Testing Desk Reference Manual*
- *JBCC Statutes and Rules regarding the State Court Interpreter Program*

2.4 REQUIREMENTS AND STANDARDS.

The services shall comply with the requirements of Government Code Chapter 157 and, for language interpreter examination services, the *NCSC State Court Interpreter Testing Desk Reference Manual*.

2.5 SUBCONTRACTORS.

Subcontractors providing services under the Contract shall meet the same requirements and level of experience as required of Respondent. No subcontract under the Contract relieves Respondent of responsibility for ensuring the requested services are provided. Respondents may not subcontract any portion of the work to be performed without the prior written approval of JBCC. In accordance with Texas Government Code Section 2161.252, Respondents shall submit a HUB Subcontracting Plan (HSP) for contracts of \$100,000 or more. For contracts of less than \$100,000, Respondent shall submit an HSP for any potential HUB Subcontracting opportunities.

2.6 PERFORMANCE TRACKING.

JBCC will conduct audits and monitor the performance of the Contract issued under this RFP. The administration of the language interpreter examinations will be under the oversight of a Texas Administration Supervisor in accordance with the procedures specified in the *NCSC State Court Interpreter Testing Desk Reference Manual*. All services under the Contract shall be performed at an acceptable quality level and in a manner consistent with acceptable standards and protocols of NCSC and are subject to supervision and audit.

**SECTION III
PROPOSAL INFORMATION**

3.1 SCHEDULE OF EVENTS.

The solicitation process for this RFP will proceed according to the following schedule:

EVENT	DATE	TIME
Issue RFP	09/16/2015	n/a
Pre-proposal Conference, if requested	09/23/2015	various
Deadline for submission of questions	09/30/2015	3:00 p.m.
Deadline for submission of answers to questions	10/01/2015	3:00 p.m.
Deadline for submission of proposals	10/13/2015	3:00 p.m.
Bid opening	10/13/2015	3:30 p.m.
Oral presentations, if requested		various
Expected Award of Contract	10/24/2015	n/a
Expected Contract Start Date	10/31/2015	n/a

3.2 REVISIONS TO SCHEDULE. JBCC reserves the right to change the dates in the Schedule of Events by posting them on OCA's Contracting & Procurements Web page as an Addendum at <http://www.txcourts.gov/oca/contracting-procurements.aspx> and Electronic State Business Daily (ESBD) <http://esbd.cpa.state.tx.us/>.

3.3 PRE-PROPOSAL CONFERENCE. JBCC may choose to schedule a pre-proposal conference for potential Respondents, which JBCC would post on its Contracting & Procurements Web page at <http://www.txcourts.gov/oca/contracting-procurements.aspx> and Electronic State Business Daily (ESBD) <http://esbd.cpa.state.tx.us/>. The pre-proposal conference is located at 205 W. 14th Street, Sixth Floor, Austin, Texas 78701 in the Tom C. Clark building. Attendance by Respondents is optional.

3.4 PROPOSAL REQUIREMENTS.

- (a) **Submissions.** Respondents shall submit one electronic copy of the Proposal. The electronic copy must be formatted as searchable PDF files and stored on a standard USB drive, CD, or DVD. The electronic copy may not contain video or use embedded fonts. Submission pages must be numbered and contain an organized, paginated table of contents corresponding to the section of the Statement of Work. Respondent shall provide a detail narrative response to show how the Respondent intends to meet the requirements of the project. If the Respondent responds with “comply” to a specification, then supporting information is required to explain how the Respondent will comply with each requirement. Respondents shall include all required information to be returned with its response as specified in the individual section numbers.
- (b) **Costs.** Respondents to this RFP are responsible for all costs of Proposal preparation.
- (c) **No copyrights.** OCA will not consider any Proposal that bears a copyright. Proposals may be subject to disclosure under Rule 12 of the Texas Rules of Judicial Administration. This disclosure may only occur after evaluation of all Proposals and an award has been made.
- (d) **Contents.** Listed below is a summary of information required to be included in a Proposal responding to this RFP. OCA reserves the right, in its sole judgment and discretion, to waive minor technicalities and errors in the best interest of the state.
1. **Respondent Information.** Include the following information related to the responding business entity: formal name and all assumed names used by the business entity; structure of business entity (i.e. sole proprietorship, partnership, corporation, etc.); state in which business entity was formed or incorporated; physical address and mailing address; principal place of business; whether, and to what extent, Respondent has established a physical presence in the State of Texas including relevant timeframes; and name, title, address, telephone number, facsimile number, and e-mail address of Respondent’s primary contact.
 2. **Experience and Qualifications.** Complete and provide the **Respondent Questionnaire, Exhibit A**, included as an Attachment to this RFP. The questionnaire solicits information about Respondent’s contracts, references, previous contract terminations, experience, and personnel (including employees and subcontractors). In addition to the Respondent Questionnaire, Respondents must provide information about the experience and qualifications of employees and contractors who will furnish services under this Contract.
 3. **Financial Solvency and Insurance Information.** Include Respondent’s most recent annual financial report or year-end financial statements, and proof of professional liability insurance and workers compensation coverage.
 4. **Statement of Objectivity.** No OCA employee may have a direct interest in the proceeds of a contract resulting from this RFP or be related within the second degree of consanguinity or affinity to anyone having a direct interest in those proceeds. Under Section 2155.004, Government Code, the respondent certifies that the individual or business entity named in a Proposal is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.
 5. **Antitrust Certification –** Each respondent will certify on the attached form compliance with the antitrust laws codified in Chapter 15, Business & Commerce Code and that the respondent did not disclose the contents of the response to a competitor in the same line of business.
 6. **Ineligibility for Certain Federal Offenses arising from Contracts for Disaster Relief –** Under Section 2155.006, Government Code, the respondent certifies that the individual or business entity named in a Proposal is not ineligible to be awarded the contract and

acknowledges that the contract, if awarded, may be terminated and payment withheld if this certification is inaccurate.

7. **Historically Underutilized Businesses (HUB) Subcontracting Plan (HSP).** In accordance with Texas Government Code Section 2161.252, Respondents shall submit an HSP (included as an attachment to this RFP) for contracts of \$100,000 or more. Failure to complete and return a required HSP with the submitted Proposal will result in rejection of the Proposal. For contracts of less than \$100,000, Respondent shall submit an HSP for any potential HUB subcontracting opportunities.
 8. **Execution of Proposal, Exhibit B.** OCA will reject proposals without an Execution of Proposal (included as an attachment to this RFP) signed by a person with authority to bind the Respondent to a contract.
- (e) Pricing.** Pricing submission form titled **RFP 212-6-0006 Pricing Submission Form** must be completed submitted with Proposal at OCA prior to October 13, 2015, at 3:00 p.m. CDT, as specified in the Schedule of Events in Section 3.1. OCA will pay selected Contractor a fee for each examination rated. Respondent should provide a cost for rating each oral examination. Respondent's pricing should not include state sales tax and federal excise tax in the compensation and fees Proposal.

3.5 **INQUIRIES.**

(a) Any inquiries shall be submitted in writing to Jeff Rinard at Jeff.Rinard@txcourts.gov, with a carbon copy (cc :) to Veronica M. Strong, CTPM at vstrong@txcourts.gov by 3:00 p.m. CDT on the deadline specified in Section 3.1 above.

(b) OCA will post written responses to inquiries on its Contracts & Procurements Web page at <http://www.txcourts.gov/oca/contracting-procurements.aspx> and the ESD (Electronic State Business Daily) at <http://esbd.cpa.state.tx.us/> no later than September 29, 2015. If a Respondent does not have Internet access, a copy of all written responses may be obtained through the point of contact listed above.

(c) Except as otherwise provided in this Section, upon issuance of this RFP, other employees and representatives of OCA will not answer questions or otherwise discuss the contents of the RFP with any potential Respondent or its representatives. Failure to observe this restriction may result in disqualification of any subsequent response. This restriction does not preclude discussions unrelated to this RFP.

3.6 **PROPOSAL SUBMISSION.**

(a) All Proposals shall be received at OCA prior to 3:00 p.m. CDT, on the date specified for submissions in the Schedule of Events in Section 3.1. Respondent should obtain a time-stamp on proposals received on the deadline date. OCA will reject late submittals.

(b) Proposals should be placed in a separate envelope or package and be clearly marked "**RFP 212-6-0006 Examination Rating Proposal,**" and "**Attention: Veronica M. Strong, CTPM.**" It is Respondent's responsibility to appropriately mark and deliver the Proposal to OCA by the specified date.

(c) Telephone, facsimile, or e-mail proposals will not be accepted.

3.7 DELIVERY OF PROPOSALS.

Proposals shall be submitted to OCA by one of the following methods:

U.S. Postal Service	Overnight/Express Mail	Hand Delivery
Office of Court Administration Attn: <u>Veronica M. Strong, CTPM</u> PO Box 12066 Austin, TX 78711-2066	Office of Court Administration Attn: <u>Veronica M. Strong, CTPM</u> 205 W. 14 th Street, Suite 600 Austin, TX 78701	Office of Court Administration Attn: <u>Veronica M. Strong, CTPM</u> 205 W. 14 th Street, Suite 600 Austin, TX 78701 Hours: 8:00 a.m. to 5:00 p.m. CDT

3.8 PROPOSAL OPENING.

Proposals will be opened at the Office of Court Administration, 205 W. 14th Street, Austin, Texas. All submitted Proposals become the property of OCA after submission. Submitted proposals shall constitute an offer to contract for a period of ninety (90) days or until OCA makes a selection, whichever occurs earlier.

3.9 PROPOSAL EVALUATION AND AWARD.

In accordance with Texas Government Code, Section 2155.063, 2155.074 and 2155.075, governing the procurement of goods and services OCA shall select a Contractor and award a contract on the basis of the best value for the state.

The evaluation criteria include the following:

- (1) experience rating oral licensing examinations; 23%
- (2) the average time for Contractor to rate licensee's oral performance over the past two years; 18%
- (3) the percentage of rated oral examinations which have been reviewed due to errors discovered in audits over the past two years 20%
- (4) experience in maintaining the security of examination materials and examination results; 21%
- (5) Contractor resources and procedures for consistently and reliably conveying examination to JBCC and the NCSC in accordance with deadlines and security procedures; 18% and

The evaluation committee will determine whether Best and Final Offers are necessary. Award of a contract may be made without Best and Final Offers. JBCC may, at its discretion, elect to have Respondents provide oral presentations and respond to inquiries from the evaluation committee related to their Proposals. A request for a Best and Final Offer is at the sole discretion of OCA and will be extended in writing

In evaluating Proposals to determine the best value for the State, OCA will consider information related to past contract performance of a Respondent, including, but not limited to, Texas Comptroller of Public Accounts Vendor Performance Tracking System (available at http://comptroller.texas.gov/procurement/prog/vendor_performance/).

3.10 RESERVATION OF RIGHTS.

OCA reserves the right to reject any and all proposals, or to re-solicit or cancel this RFP, if such action is deemed in the best interests of the State of Texas and OCA.

SECTION IV GENERAL TERMS AND CONDITIONS

4.1 OFFER AND ACCEPTANCE

A proposal submitted in response to this RFP is an offer to contract based upon the terms, conditions, and specifications contained herein. The offer is accepted by JBCC and becomes a contract when a purchase order is executed. The selected Respondent shall be referred to as the Contractor.

4.2 CONTRACT DOCUMENTS.

The contract documents will consist of the following:

- (a) The executed purchase order
- (b) Any written Addenda or Amendments
- (c) The RFP, (including the General Terms and Conditions, attachments, appendices, and exhibits);
- (d) Respondents response
- (e) Any Best and Final Offer (BAFO) submitted by the Contractor;
- (f) The *NCSC State Court Interpreter Testing Desk Reference Manual*, as applicable;

The contract documents are incorporated in the Contract for all purposes and contain the entire agreement between the Contractor and JBCC. In the event of a conflict between the documents listed in this paragraph, the documents will control in the order of precedence listed above beginning with (a), then (b), then (c), then (d), then (e), then (f). In the event and to the extent any provisions in multiple documents address the same or substantially the same subject matter but do not actually conflict, the more recent provisions shall be deemed to have superseded the earlier provisions. Any modification, alteration, or waiver of any term, covenant, or condition of the Contract and any attachments must be in writing and executed by JBCC and the Contractor.

4.3 STANDARDS OF SERVICES.

Contractor shall provide all of the above services and all reasonably related services in accordance with applicable professional standards of a Contractor providing examination administration, proctoring, and grading services. Contractor represents and warrants that it has the requisite qualifications, experience, personnel and other resources to perform in the manner required by this Contract.

4.4 PROGRAM MANAGER.

JBCC will designate a Program Manager to serve as the point of contact between the JBCC and Contractor and to coordinate and organize testing. JBCC's Program Manager shall serve as the Test Administration Supervisor for language interpreter examinations unless that function is fulfilled by National Center for State Courts Language Access Services Section personnel in accordance with the *NCSC State Court Interpreter Testing Desk Reference Manual*. The Program Manager will review and audit exam materials to ensure there are no mathematical or other errors. The Program Manager has no express or implied authority to vary the terms of the Contract, amend the Contract in any way or waive strict performance of the terms or conditions of the Contract.

4.5 PERSONNEL.

Contractor shall assign only NCSC-approved raters and NCSC-approved lead raters to this Contract, including subcontractors. JBCC's Program Manager shall authorize the key personnel designated in the Proposal to provide services under this Contract prior to the execution of the purchase order. Contractor may substitute appropriate key personnel to accomplish its duties so long as the substituted personnel are NCSC-approved and otherwise equally qualified and skilled in the tasks necessary to render examination services. Any substituted personnel must be

approved by JBCC's Program Manager. Contractor shall provide to JBCC prior written notice of any proposed change in key personnel involved in providing services under this Contract.

Subcontractors providing services under the Contract shall meet the same requirements and level of experience as required of Contractor, including NCSC approval, and their personnel shall be subject to the same approval process. No subcontract shall relieve Contractor of responsibility for ensuring the requested services are provided, and Contractor shall be the sole contact for OCA.

4.6 INVOICES.

Contractor shall provide invoices to Office of Court Administration, Accounts Payable for contract services upon completion and acceptance by JBCC of examination ratings as acceptable. No payment shall be made under this contract without the prior submission of examination results for eligible testers. Contractor shall submit invoices within 30 days after JBCC acceptance, as satisfactory, of rating, or re-rating.

4.7 PAYMENTS.

OCA will pay the Contractor 30 days after the later of: the date the performance and acceptance of the services under this contract are complete; or the date OCA receives Contractor's invoice.

4.8 TERM AND TERMINATION.

The Contract shall become effective on the purchase order execution date and shall expire on August 31, 2017, unless otherwise sooner terminated as provided by Contract. Provisions herein regarding confidentiality, indemnification, transition, records, right to audit and independent audit, property rights, dispute resolution, invoice and fees verification, and default shall survive the termination or expiration dates of the Contract. By providing thirty (30) days' written notice to Contractor by certified mail, return receipt requested or by facsimile, OCA may terminate the contract within OCA's sole discretion.

4.9 PUBLIC ACCESS TO RECORDS.

Although OCA is not subject to the Texas Public Information Act, all RFP and contract documents and information, and any report, analysis or data generated as a result of the contract services may be subject to public disclosure under Rule 12 of the Texas Rules of Judicial Administration. OCA will notify Contractor of any request received by OCA for records that Contractor has identified as confidential in its response to this RFP. Contractor will notify OCA's Program Manager within twenty-four (24) hours after receiving a third-party's request for information relating to the administration, rating of any part of the examination or any other information obtained or arising from the work on the Contract. Contractor agrees to maintain the security of the examination and agrees to refrain from releasing any information arising from the contract without the knowledge and consent of OCA.

4.10 CONFIDENTIALITY.

Contractor agrees to maintain and shall execute a confidentiality agreement safeguarding the confidentiality of information received from the State of Texas during the performance of this Contract, including but not limited to personal information such as social security numbers. If administering language interpreter examinations, Contractor agrees to execute the oath to maintain security of the examination materials as described in the *NCSC State Court Interpreter Testing Desk Reference Manual*.

4.11 INSURANCE AND OTHER SECURITY.

Within five (5) business days after executing the contract, Contractor must provide OCA with current certificates of insurance or other proof acceptable to OCA of Standard Workers Compensation Insurance and Commercial General Liability Insurance.

All such coverage shall be with companies licensed in the state of Texas, with "A" rating from Best, and authorized to provide the corresponding coverage. All policies shall contain endorsements prohibiting cancellation except upon at least thirty (30) days prior written notice to OCA. Contractor

shall maintain the above insurance coverage during the term of this Contract, and shall provide OCA with an executed copy of the policies immediately upon request.

4.12 INDEMNIFICATION.

Contractor shall defend, indemnify, and hold harmless the State of Texas and its officers and employees, and OCA, including JBCC, and its officers, employees and contractors from and against all claims, actions, suits, demands, proceedings, costs, damages, and liabilities, arising out of, connected with, or resulting from any acts or omissions of Contractor or any agent, employee, subcontractor, or supplier of Contractor in the execution or performance of the Contract. Contractor shall coordinate its defense with the Texas Attorney General's office as requested by OCA.

This paragraph is not intended to and shall not be construed to require contractor to indemnify or hold harmless the State or OCA for any claims or liability resulting from the negligent acts or omissions of OCA or its employees.

4.13 DISPUTE RESOLUTION.

The dispute resolution process provided for in Texas Government Code Chapter 2260 shall be used by OCA, including JBCC, and Contractor to resolve any dispute arising under the Contract.

4.14 AMENDMENTS.

The Contract may be amended only upon written agreement between JBCC and Contractor; however, any amendment of this Contract that conflicts with the laws of the State of Texas shall be void *ab initio*.

4.15 APPLICABLE LAW; VENUE.

This Contract shall be governed by and construed in accordance with the laws of the State of Texas. The venue of any suit arising under this Contract is fixed in any court of competent jurisdiction of Travis County, Texas.

4.16 STRICT COMPLIANCE.

Time is of the essence in the performance of the Contract. Contractor shall strictly comply with all of the contract deadlines, requirements, and Standards of Performance.

4.17 ASSIGNMENTS.

Without the prior written consent of JBCC, Contractor may not assign this Contract, in whole or in part, and may not assign any right or duty required under it.

4.18 PARTIALLY-COMPLETED WORK.

Within one calendar day after termination of this Contract, or at JBCC's request, Contractor shall deliver to JBCC all completed, or partially completed, work and any and all documentation or other products and results of these services. Failure to timely deliver such work or any and all documentation or other products and results of the services shall be considered a material breach of the Contract.

4.19 FEDERAL, STATE, AND LOCAL REQUIREMENTS.

Contractor shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common-law employees. Contractor is responsible for both federal and State unemployment insurance coverage and standard worker's compensation insurance coverage. Contractor shall comply with all federal and State tax laws and withholding requirements. The State of Texas shall not be liable to Contractor or its employees for any unemployment or workers' compensation coverage, or federal or State withholding requirements. Contractor shall indemnify the State of Texas and shall pay all costs, penalties, or losses resulting from Contractor's omission or breach of this Section.

4.20 SEVERABILITY CLAUSE.

In the event that any provision of the Contract is later determined to be invalid, void, or unenforceable, then its remaining terms, provisions, covenants, and conditions shall remain in full force and effect, and shall in no way be affected, impaired, or invalidated.

4.21 APPLICABLE LAW AND CONFORMING AMENDMENTS.

Contractor must comply with all current and amended laws, regulations, requirements and guidelines applicable to a Contractor providing services to the State of Texas throughout the term of the Contract. OCA reserves the right, in its sole discretion, to unilaterally amend the Contract throughout its term to incorporate any modifications necessary for OCA's or Contractor's compliance with all applicable State and federal laws and regulations.

4.22 NO WAIVER.

Nothing in the Contract shall be construed as a waiver of the state's sovereign immunity. The Contract shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to the State of Texas. The failure to enforce, or any delay in the enforcement, of any privileges, rights, defenses, remedies, or immunities available to the State of Texas under the Contract or under applicable law shall not constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. OCA, including JBCC, does not waive any privileges, rights, defenses, or immunities available to OCA and JBCC by entering into the Contract or by its conduct prior to or subsequent to entering into the Contract.

4.23 NO LIABILITY UPON TERMINATION.

If the Contract is terminated for any reason, OCA, JBCC and the State of Texas shall not be liable to Contractor for any damages, claims, losses, or any other amounts arising from or related to any such termination. However, Contractor may be entitled to the remedies provided in Government Code Chapter 2260.

4.24 INDEPENDENT CONTRACTOR.

Contractor or Contractor's employees, representatives, agents and any subcontractors shall serve as an independent contractor in providing services under this Contract and shall be responsible for its business expenses. Contractor's or Contractor's employees, representatives, agents and any subcontractors shall not be employees or agents of the State of Texas and shall not be entitled to benefits of state employment such as retirement or leave benefits. Should Contractor subcontract any of the services required in this Contract, OCA and JBCC are in no manner liable to any subcontractor(s) of Contractor.

4.25 LIMITATION ON AUTHORITY.

Contractor shall have no authority to act for or on behalf of OCA, JBCC or the State of Texas except as expressly provided for in this Contract; no other authority, power or use is granted or implied. Contractor may not incur any debts, obligations, expenses, or liabilities of any kind on behalf of the State of Texas, OCA or JBCC.

4.26 INTELLECTUAL PROPERTY CLAIMS.

Contractor shall indemnify, save and hold harmless the State of Texas, OCA, and JBCC from and against claims of patent, trademark, copyright, trade secret or other proprietary rights, violations or infringements arising from the State's, JBCC's, OCA's, or Contractor's use of any services, software, or other items provided to the State of Texas or OCA by Contractor or otherwise to which the State of Texas, JBCC, or OCA has access as a result of Contractor's performance under this Contract, provided that OCA/JBCC shall notify Contractor of any such claim within a reasonable time of receiving notice of any such claim. If Contractor is notified of any claim subject to this section, Contractor shall notify OCA/JBCC of such claim within five (5) business days of such notice. No settlement of any such claim shall be made by Contractor without OCA's prior written approval. Contractor shall reimburse the State of Texas and OCA for any claims, damages, losses, costs, expenses, judgments or any other amounts, including, but not limited to, attorneys' fees and court costs, arriving from any such claim. Contract shall pay all reasonable costs of the State's and

OCA's counsel and shall also pay costs of multiple counsel, if required to avoid conflicts of interest. Contract represents that it has determined what licenses, patents and permits are required under this Contract and has acquired all such licenses, patents and permits. In the event that Contractor loses the right to allow the state to use any technology under this indemnification, then Contractor shall repay the State all monies paid under this Contract.

4.27 SUPPORTING DOCUMENTS.

Contractor shall maintain and retain supporting fiscal and any other documents relevant to showing that any payments under the Contract were expended in accordance with the laws and regulations of the State of Texas, including but not limited to, requirements of the Comptroller of the State of Texas and the State Auditor. Contractor shall maintain all such documents and other records relating to this Contract and the State's property for a period of four (4) years after the date of submission of the final invoices or until a resolution of all billing questions, whichever is later. Contractor shall make available at reasonable times and upon reasonable notice, and for reasonable periods, all documents and other information related to the "Work" as defined in Section 4.33 of this RFP. Contractor and any subcontractors shall provide the State Auditor with any information that the State Auditor deems relevant to any investigation or audit.

4.28 ACCESS TO RECORDS.

Contractor shall cooperate with any authorized agents of the State of Texas and shall provide them with prompt access to all of such State's work as requested. Contractor's failure to comply with this Section shall constitute a material breach of the Contract and shall authorize OCA and the State of Texas to immediately assess appropriate damages for such failure. The acceptance of funds by Contractor or any other entity or person directly under the Contract, or indirectly through a subcontract under the Contract, shall constitute acceptance of the authority of the State Auditor, Comptroller or other agency of the State of Texas to conduct an audit or investigation in connection with those funds. Contractor shall ensure that this paragraph concerning the State's authority to audit funds received indirectly by subcontractors through Contractor and the requirement to cooperate is included in any subcontract it awards. Furthermore, under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit.

4.29 FELONY CRIMINAL CONVICTIONS.

Contractor shall fully advise OCA as to the facts and circumstances surrounding conviction of a felony criminal offense of Contractor or any of its employees that are assigned to or associated with this project.

4.30 NOTICES.

Any written notices required under this Contract will be by either hand delivery or by U.S. Mail, certified, return receipt requested, and is effective on receipt by the affected party. The address for Contractor will be the address on the Proposal. The address for OCA will be that specified in Section III of this RFP. Either party may change its designated notice address by written notification to the other party.

4.31 DEBTS OR DELINQUENCIES TO STATE.

The Comptroller is prohibited from issuing any payment to a person or entity reported to have an indebtedness or delinquency to the State. To the extent that Contractor owes any debt or delinquent taxes to the State of Texas, any payments or other amounts Contractor is otherwise owed under this Contract shall be applied toward the debt or delinquent taxes until the debt or delinquent taxes is paid in full. Contractor agrees to comply with all applicable laws regarding satisfaction of debts or delinquencies to the State of Texas.

4.32 CONTRACTS FOR SERVICES.

In accordance with Government Code Section 2155.4441, the Contractor shall purchase products and materials produced in the State of Texas, when available at a price and time comparable to products and materials produced outside the State.

4.33 WORK MADE FOR HIRE.

"Work" is defined as all reports, statistical analyses, work papers, work products, materials, approaches, designs, specifications, systems, documentation, methodologies, concepts, research materials, intellectual property or other property developed, produced, or generated in connection with the Contract. All work performed pursuant to the Contract is made the exclusive property of OCA. All rights, title and interest in and to said property shall vest in OCA upon creation and shall be deemed to be a work for hire and made in the course of the services rendered pursuant to the Contract. To the extent that title to any such work may not, by operation of law, vest in OCA, or such work may not be considered a work made for hire, then all rights, title and interest therein are hereby irrevocably assigned to OCA. OCA shall have the right to obtain and to hold in its name any and all patents, copyrights, registrations or such other protection as may be appropriate to the subject matter, and any extensions and renewals thereof. Contractor must give OCA and the State of Texas, and their designees, all assistance required to perfect the rights defined herein without any charge or expense beyond those amounts payable to Contractor for services rendered under the Contract.

4.34 TECHNOLOGY ACCESS CLAUSE.

In the event that Contractor's Work includes the provision of an automated information system as defined by Government Code Section 2157.001(1), then state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, Contractor shall provide OCA technology that is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: (1) providing equivalent access for effective use by both visual and nonvisual means; (2) presenting information, including prompts used for interactive communications, in formats intended for both visual and nonvisual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this Section, the phrase "equivalent access" means substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services that would constitute reasonable accommodations under the federal Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.

4.35 POLICY COMPLIANCE.

Contractor's employees and agents (including subcontractors and their employees and agents) identified by OCA management as having sufficient presence on OCA premises shall be required to adhere to applicable OCA human resources, information services, and finance and operations policies and shall be required to attend one or more policy orientation sessions. Those employees and agents identified as having access to State of Texas information resources and information resources technologies may be subject to periodic criminal history record investigations.

4.36 FORCE MAJEURE.

Neither Contractor nor OCA, including JBCC, shall be liable to the other for any delay in, or failure of performance, of any requirement included in any PO resulting from this RFP caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay of failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the

reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

4.37 DEFAULT.

If Contractor is in default on the Contract, OCA/JBCC may cancel the Contract without notice and either re-solicit or award the contract to the next best responsive and responsible Respondent. The defaulting Contractor will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work, unless the specification or scope of work is significantly changed. In the event of abandonment or default, Contractor shall pay damages to OCA including but not limited to re-procurement costs, and any consequential damages to the State of Texas or OCA/JBCC resulting from Contractor's non-performance.

4.38 NO CONFLICTS.

Contractor represents and warrants that Contractor has no actual or potential conflicts of interest in providing services to the State of Texas under the Contract and that Contractor's provision of services under this Contract would not reasonably create an appearance of impropriety.

4.39 FALSE STATEMENTS / BREACH OF REPRESENTATIONS.

Any false statements by Contractor in the Contract documents or violation by Contractor of any of the representations, warranties, guarantees, certifications or affirmations included in the Contract shall constitute default by Contractor, and OCA may terminate or void the Contract for cause and pursue other remedies available to OCA under the Contract or applicable law.